



# The Decriminalization of Sex Work in the United States

An analysis of modern solutions to the overcriminalization, discrimination, and loss of human rights facing U.S. sex workers

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## Executive Summary

The criminalization of prostitution and other forms of sex work in the United States is an unsustainable system that threatens survival workers, often part of marginalized communities, with police brutality, assault, rape, negative healthcare outcomes, and increased risk of trafficking without opportunity for justice. By analyzing modern perspectives on the legalization or decriminalization of prostitution from around the world, it is clear that the full decriminalization of sex work in the United States is the most effective solution to mitigate these harms and ensure the autonomy and dignity of over a million sex workers in the US.

## Abstract

Most forms of sex work are fully criminalized in the United States, creating a system that has driven the industry largely underground and made it exponentially more dangerous, especially for the minority populations that are disproportionately represented in survival work due to labor discrimination, disability, and the cyclical harms of poverty. Fully decriminalizing prostitution and other forms of illicit sex work is a vital step to ensuring dignity, justice, and human rights for the one million sex workers living and working in the United States today, and is supported by dozens of notable human rights groups, including Amnesty International, the United Nations, the World Health Organization, the Global Alliance Against Traffic in Women, and the American Civil Liberties Union. Criminalization targets those already working in a survival industry with fear of arrest, rape, and assault by police, a threat that is only exacerbated by the intersection of high population BIPOC, disabled, and LGBTQ+ sex workers and existing systemic racism in United States police departments (Amnesty International). Due to a criminalized environment, sex workers are subject to the often violent whims of clients and law enforcement without an opportunity for redress and are faced with a critical lack of healthcare. Evidence from other decriminalized and legalized systems, including the Nordic Model of the Netherlands and New Zealand's fully decriminalized system proves that the best way to reduce harm to sex workers is to fully decriminalize all forms of consensual and safe sex work (Nielson, Rottier).

## Introduction

Over a million people in the United States are estimated to make their living in some form of illicit sex work, and tens of thousands of them are arrested on a variety of charges that directly or indirectly criminalize the act of selling consensual and safe sex. These laws have been recognized as dangerous in many parts of the world, and dozens of prominent human rights advocacy groups, including Amnesty International, the World Health Organization, the United Nations, the Global Alliance Against Traffic in Women, the American Civil Liberties Union, and national sex worker advocacy group Decriminalize Sex Work, recommend the full repeal of the state and national laws that turn this work into a crime.

The primary reason for this initiative is to protect the human rights of survival workers, and aid in diminishing discrimination and police brutality, both issues intrinsic to sex work. The criminalization of prostitution has critically failed in its goal to reduce sex work and its negative outcomes and end human trafficking. Instead, it has opened the door for countless forms of abuse and dehumanization. This criminalization also plays into human trafficking, as many victims are unable or unwilling to report abuse out of fear of arrest or retaliation. Because of a lack of autonomy, many sex workers are exploited by their pimps and are unable to make and keep their own money to get out of their situation, leaving them dependent on their abusers.

The current system is, at best unsustainable, and at worst, openly hostile to those trying to survive. The best way to resolve these harms is not the over-policing or perpetuation of mass incarceration currently in place, but rather the full decriminalization of safe and consensual sex work.

## Definitions and Clarity

For the sake of clarity throughout the following report, some key terms must be defined and outlined. Firstly, sex work is defined as any exchange of sexual services for compensation and is an agreement between 1) an adult, consenting sex worker and 2) an adult, consenting, and paying client, also referred to as a ‘John’.

The terms ‘legalization’ and ‘decriminalization’ are defined by University of Rhode Island professor Donna Hughes as follows: “legalization would mean the regulation of prostitution with laws regarding where, when, and how prostitution could take place. Decriminalization eliminates all laws and prohibits the state and law-enforcement officials from intervening in any prostitution-related activities or transactions, unless other laws apply” (Hughes).

Sex trafficking is defined by the Department of Homeland Security as the use of force, fraud, or coercion to obtain some type of labor or commercial sex act (Department of Homeland Security). Any compensated sexual acts involving a minor (under the age of 18) are considered child sex trafficking or statutory rape.

## Background and Industry Analysis

### Worldwide systems of sex worker laws and their effects

Globally, there are many systems in place to regulate and criminalize sex work. In order to determine the best outcomes, an explanation and analysis of the options is vital. In this section, we will address different systems of sex work legislation and address their strengths and drawbacks.

#### *Full Criminalization*

Prostitution and related activities, including pimping, buying, and selling sex, is fully criminalized in 92 of the 195 recognized nations, including North and South Korea, China, Russia, most of Northern Africa, and the United States (excluding Nevada). When sex work is criminalized, workers are unable to report abuses by clients or police, creating a heightened degree of violence. Johns and other abusers are far more likely to rape, beat, or murder a sex worker knowing that by reporting the abuse, the worker is far more likely to be arrested and charged than the abuser. Further, in a criminalized environment, sex workers are forced to work in dangerous areas and take clients without any screening. Street based sex work is incredibly dangerous. A report by the Urban Justice Center found that 80 percent of street-based sex workers reported being threatened with violence or beaten by clients or police in the last six months (Urban Justice Center). Criminalization also leads to unequal access to health care. Due to participation in illegal work, sex workers are unable to register for most forms of insurance and are at risk of discovery and arrest when seeking medical treatment. This largely contributes to dangerous rates of potentially deadly health outcomes, especially HIV/AIDS, in the United States and globally (United Nations...AIDS). Further, the negative impacts of criminalization disproportionately target vulnerable minority groups, whether or not they participate in sex work. Amnesty International notes the particular danger to Black women, as well as immigrant women and trans workers across racial demographics (*Sankofa*). Due to low barriers for arrest, many trans women are arrested in known red-light districts of New York City simply for carrying contraception or speaking for too long with someone. Rates of police brutality against Black and brown sex workers is also particularly high, in keeping with nationwide trends.

#### *Legalization (Nevada, Amsterdam)*

Legalization differs from other methods of sex work legislation largely through regulation. Legalized systems can be found in many counties of Nevada, Germany, Switzerland, and Amsterdam in the Netherlands. In these countries and regions, legal sex work is subject to licenses, health and safety inspections, zoning laws, and other methods of oversight. This does work to reduce many of the harms found in a criminalized system, especially access to judicial redress and safety of working conditions, but can increase the harms significantly for workers who are unable to comply with regulations. In Germany, for example, vice taxes and license

costs have skyrocketed since sex work was legalized, and overt control of sex workers' practices have led to many poor and immigrant women left unable to keep up. Many of these countries also have high rates of trafficking victims because of difficulty differentiating between consenting and nonconsenting workers and an inability for workers breaking regulations to seek justice.

### *Partial Decriminalization (Nordic Model, UK)*

Perhaps the most popular model of legislation among groups who oppose sex work is the Nordic Model. Instituted in 8 countries including Sweden, Norway, France, and Canada, the Nordic Model decriminalizes the selling of sex while maintaining criminal penalties on buying sex and profiting off of another's sex work (i.e. pimping). The goal is to reduce demand by reducing supply, eventually leading to the minimization or elimination of the sex industry entirely.

Evidence, however, shows that instead of reducing sex work, the Nordic Model takes away the ability for sex workers to make a meaningful and safe living. It often leads to a loss of business for sex workers, which can lead them offering more dangerous services and accepting clients with less screening. It also increases the need for street work, lowers income for sex workers, and requires them to take similar dangerous precautions in fear of discovery from police as is found in criminalized systems. Further, in most countries where profiting off of another's prostitution is illegal, definitions can lead to friends, co-workers, and even landlords to be subject to criminal charges for transactions as basic as rent payment. Under this system, sex workers can be evicted and ostracized, which is incredibly harmful for a sex worker trying retain autonomy, support basic living standards, or transition out of survival sex work (Thessland and Okyere).

### *Full Decriminalization (New Zealand)*

The final major method of sex work legislation is complete decriminalization, implemented in 1995 in New South Wales, Australia, and 2003 in New Zealand. Despite being the least common method of legislating sex work, a wealth of evidence shows that it may be the most effective. Complete decriminalization removes all criminal penalties for buying, selling, and making money off the sale of sex, and imposes minimal regulation to control the industry. In New Zealand, sex workers pay federal taxes as a business based income if they are associated with a brothel, and as a freelancer if they work independently. Minor fines are in place to support and enforce safe-sex practices, including the use of prophalactics. 10 and 15 year reviews for both NZ and AU found that decriminalization in their regions reduced violence and STD rates, increased pursuit of justice, and allowed for better social service support for the majority of sex workers (Donovan). Major concerns over decriminalization appear to center around fears of increased sex work, decreased respect and dignity provided to women in general, and an increase of sex trafficking. In general, studies concerning NZ, NSW, and even in Rhode Island found no , and marked change in rates of sex work or respect towards the female population, and a

substantial decrease in sex trafficking. Decriminalization is also most widely supported by sex workers.

## **The Intersection of Prostitution and Race, Trafficking, and Gender-Based Violence**

### *Sex work and race*

An eloquent 1993 essay by author Vednita Nelson posits that the intersection between racism and sexism is most clear in the sex industry. She writes that racism makes Black women and girls most vulnerable to cyclical sexual exploitation due to the systemic factors that limit educational and vocational opportunities for Black Americans, racist portrayals of Black women in the media as easy or somehow less than human, and the brutal criminal justice system that more harshly judges and sentences Black women (Nelson). According to FBI crime data, 40% of adults and 80% of children arrested for prostitution in 2015 were Black, despite the fact that children involved in the sex trade are categorized as sex trafficking victims under the law (FBI...Report). In an interview, Charlene Carruthers, the National Director of Black Youth Project 100, asserted the importance of centering issues faced by Black sex workers. She stated that “unless we work from the margins, and move the margins into the center, none of us will be free” (Sankofa). By failing to protect Black sex workers, both those working out of survival and those working by choice, we are endangering millions of Black women to another avenue of rampant police violence and injustice in the courts.

Black communities are not the only groups to face race based violence in the sex industry. Due to employment and language barriers, low income immigrant women from South and Central America and East Asia make up large proportions of sex workers and trafficking victims, especially in border states. Indigenous women and girls also make up large numbers of both sex workers and trafficking victims, an issue largely attributed to poverty rates and structural violence against Indigenous populations (Kang).

### *Sex work and gender based violence*

Perhaps more closely related to prostitution than race is gender. The vast majority of sex workers surveyed across a variety of reports are women, as many as 80-90%, including a large proportion of transgender women. Rape and sexual assaults as a form of gender based violence is extremely common in sex worker populations. A 2003 study found that 93% of sex workers had been sexually assaulted while working, and 75% had been raped. Even worse, 44% reported being raped or coerced into sex with law enforcement. Other forms of violence are also common: 82% of workers reported being physically assaulted, 56% were robbed by clients, and 83% reported being threatened with weapons (Dalla). Another major issue facing women in sex industries is high prevalence of unwanted pregnancy. A study of sex workers in Zambia found that as many as 61% of sex workers have had an unwanted pregnancy while working in the sex industry many

chose to terminate the pregnancy due to an inability to safely carry or provide for a child. Increasing healthcare access and contraceptive use among sex workers would drastically reduce unplanned pregnancy, abortion rates, and maternal mortality.

### *Sex work and trafficking*

Likely the most common concern surrounding sex work policy is human trafficking, and rightfully so. Trafficking and sex work are most clearly separated by the presence of informed and freely given consent. Because of this, those who are coerced or forced to perform sex for compensation are considered trafficking victims, as are any minors participating in sex work for any reason, as minors are legally unable to consent. While addressing both issues is incredibly important, it is vital that the issues are not conflated. By targeting all forms of sex work in the name of reducing trafficking, it actually becomes much harder to find and prosecute traffickers due to the industry being pushed further and further underground. Under a criminalized system, trafficking victims are likely to be arrested and convicted for their role in the commercial sex industry, consensual or not. This means that criminal behavior lurks unnoticed in the shadows, and victims are forced to silently suffer in fear of greater harm should they report. By destigmatizing sex work and ensuring pursuit of justice, decriminalization actually reduces rates of human trafficking for adults and minors (Chanda).

## **Conclusion**

In the United States today, over a million men, women, and nonbinary sex workers are being deprived of their basic human rights, being exploited and abused by clients, law enforcement, and broader society. Criminalization has proven itself to be a failed system, pretending to be a solution to sex trafficking while continuing to exacerbate its harms. The fact is, no solution is going to get rid of the sex industry, but each has the option of supporting sex workers or demonizing them and making an already dangerous industry more dangerous for workers and victims alike. Sex workers are people first, and they deserve all of the human and legal rights granted to any other citizen, rights that in the current system have been largely ignored until they are actively dismantled.

A wealth of global evidence from across decades and industries shows that complete decriminalization is the best solution among many to support sex workers and reduce the multitude of injustices they face on a daily basis. Decriminalization also reduces auxiliary harms, including police and gender based violence, sex trafficking, and health crises. The current system is continually threatening and exploiting our most vulnerable citizens, and the U.S cannot continue to abide the injustice it's laws have created. In order to protect our citizens and make a crucial step forward towards reforming and improving our criminal justice system, adult, voluntary, and consensual sex work must be fully decriminalized in the United States.

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